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Attorneys for Proposed Intervenor, Jeffrey K. Berns

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States persons who,
at any time during the period January 1,
2013, through December 31, 2015,
conducted transactions in a convertible
virtual currency as defined in IRS Notice
2014-21.

Case No.: 3:16-cv-06658-JSC

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO INTERVENE,
TO QUASH SUMMONS, OR FOR
PROTECTIVE ORDER, OR FOR AN
ORDER SCHEDULING AN
EVIDENTIARY HEARING AND
PERMITTING LIMITED DISCOVERY**

Date: January 19, 2017
Time: 9:00 a.m.
Courtroom: F, 15th Floor
Judge: Hon. Jacqueline Scott Corley

1 Proposed Intervenor-Movant Jeffrey K. Berns hereby requests that the Court take judicial
 2 notice pursuant to Federal Rule of Evidence 201 of the following documents submitted in support
 3 of his Motion to Intervene, to Quash Summons, or for Protective Order, or for an Order Scheduling
 4 an Evidentiary Hearing and Permitting Limited Discovery:

- 5 A. Report dated September 21, 2016, by the Treasury Inspector General for Tax
 6 Administration titled “As the Use of Virtual Currencies in Taxable Transactions
 7 Becomes More Common, Additional Actions Are Needed to Ensure Taxpayer
 8 Compliance,” available at
 9 <https://www.treasury.gov/tigta/auditreports/2016reports/201630083fr.pdf>. [**Exhibit 1**]
 10 B. Report dated May 16, 2016, by the Treasury Inspector General for Tax Administration
 11 titled “The Internal Revenue Service Did Not Identify and Assist All Individuals
 12 Potentially Affected by the Get Transcript Application Data Breach,” Ref. # 2016-
 13 40-037, available at
 14 <https://www.treasury.gov/tigta/auditreports/2016reports/201640037fr.pdf>. [**Exhibit**
 15 **2**]
 16 C. U.S. Government Accountability Report, GAO-16-398, *Information Security: IRS*
 17 *Needs to Further Improve Controls Over Financial and Taxpayer Data* (Mar.
 18 2016), available at <http://www.gao.gov/assets/680/676097.pdf>. [**Exhibit 3**]
 19 D. Prepared Remarks of Commissioner John A. Koskinen Before the Council for
 20 Electronic Revenue Communication Advancement dated October 23, 2015, which are
 21 available at [https://www.irs.gov/uac/newsroom/prepared-remarks-of-commissioner-](https://www.irs.gov/uac/newsroom/prepared-remarks-of-commissioner-john-a-koskinen-before-the-council-for-electronic-revenue-communication-advancement)
 22 [john-a-koskinen-before-the-council-for-electronic-revenue-communication-](https://www.irs.gov/uac/newsroom/prepared-remarks-of-commissioner-john-a-koskinen-before-the-council-for-electronic-revenue-communication-advancement)
 23 [advancement](https://www.irs.gov/uac/newsroom/prepared-remarks-of-commissioner-john-a-koskinen-before-the-council-for-electronic-revenue-communication-advancement). [**Exhibit 4**]

24 Judicial notice is appropriate for **Exhibits 1-4** because they are documents compiled by an
 25 administrative agency, and were obtained from a government website. These exhibits thus
 26 constitute information that “is not subject to reasonable dispute because it can be accurately and
 27 readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
 28 201(b)(2); *see also United States v. Chapel*, 41 F.3d 1338, 1342 (9th Cir. 1994) (district court did
 not err in taking judicial notice of FDIC document that “is a source whose accuracy cannot be

reasonably questioned”); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (same, regarding handbook of U.S. Department of Labor, Wage and Hour Division); *Paralyzed Veterans of Am. v. McPherson*, 2008 WL 4183891, at *5 (N.D. Cal. Sept. 9, 2008) (“It is not uncommon for courts to take judicial notice of factual information found on the world wide web. This is particularly true of information on government agency websites, which have often been treated as proper subjects for judicial notice.”) (citations omitted).

Proposed Intervenor-Movant Jeffrey K. Berns further requests that the Court take judicial notice pursuant to Federal Rule of Evidence 201 of the following facts submitted in support of his Motion to Intervene, to Quash Summons, or for Protective Order, or for an Order Scheduling an Evidentiary Hearing and Permitting Limited Discovery: Coinbase, Inc. is a licensed money transmitter in 34 states, the District of Columbia, and Puerto Rico. Printout from Coinbase, Inc.’s website showing a list of U.S. jurisdictions that Coinbase is licensed to conduct services as a money transmitter or money services business, available at <https://www.coinbase.com/legal/licenses>. [**Exhibit 5**].

Judicial notice of the facts established by **Exhibit 5** is appropriate because they are readily ascertainable fact taken from the Internet, and they are commonly known and undisputed. Fed. R. Evid. 201(b)(2); *see also O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) (collecting cases); *In re Zynga Privacy Litig.*, 750 F.3d 1098, 1101-02 n.2 (9th Cir. 2014) (judicial notice taken of current version of publicly-available HTTP specification); *Matthews v. Nat'l Football League Mgmt. Council*, 688 F.3d 1107, 1113 (9th Cir. 2012) (taking judicial notice of statistics available on the NFL's Web site); *Yusupov v. Attorney General of U.S.*, 650 F.3d 968, 985 n.23 (3d Cir. 2011) (taking judicial notice of statements made on website).

For the reasons stated above, Proposed Intervenor-Movant Jeffrey K. Berns moves the Court to grant judicial notice of the documents and facts set forth above.

Dated: December 13, 2016

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